



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 18, 2003

Mr. T. Daniel Santee, II
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2003-4215

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182996.

The City of Abilene Police Department (the "department") received a request for a complaint letter written by named individuals residing at a specific named location as well as "any other documentation" pertaining to the issuance of a citation to the requestor by "the Abilene Animal Control." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code excepts from disclosure certain records of law enforcement agencies and prosecutors. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.,* Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the

administrative agency if its release would interfere with law enforcement. *See* Gov't Code 552.108(a)(1), (b)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). You have neither explained to this office how Abilene animal control is a law enforcement agency, nor have you told us that the records at issue have been forwarded to an appropriate law enforcement agency. Further, although you provide specific information as to which ordinance was allegedly violated, you neither indicate, nor does the information reveal, whether the potential violations carry criminal penalties. Therefore, we have no basis for ruling that the information may be withheld under section 552.108, and thus, as you raise no other exceptions to disclosure, you must release the submitted responsive information to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

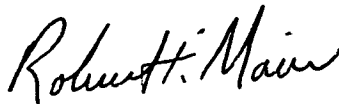
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Robert F. Maier". The signature is written in a cursive style with a large, stylized "R" and "M".

Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 182996

Enc. Submitted documents

c: Mr. Cliff Hallford
2401 South 34th
Abilene, Texas 79605
(w/o enclosures)